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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1048

THE TEXAS COMPANY (P.R.) INC.,
(TEXACO PUERTO RICO, INC.),
ESSO STANDARD OIL COMPANY (P.R.) AND
ESSO STANDARD S. A. LTD.,
Petitioners,

v.

THE SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent.

MOTION TO DISMISS

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MOTION TO DISMISS

TO THE HONORABLE COURT:

Now comes appellee, The Secretary of the Treasury of Puerto Rico, represented by the undersigned attorneys, and respectfully submits the following Motion to Dismiss pursuant to Rule 16 of the Rules of the Supreme Court of the United States.

Statement of Facts

In 1942, the United States Government acquired in Catano, Puerto Rico, through expropriation proceedings, a tract of land for the construction of fuel storage facilities in connection with the Tenth Naval District in San Juan, Puerto Rico.[1]

In July 1947, the Secretary of Navy leased the land to appellants by virtue of a contract of Use and Occupancy, supplemented in March 1948, which essentially provided that for a sum stipulated, the appellants could use, occupy and improve the land and facilities thereon for 20 years with the right to renew the contract for an additional 10 years.[2]

For the tax years in controversy, the Government of Puerto Rico levied an ad valorem property tax on personal property of appellants located within the leased premises. The appellants filed suit in the Superior Court of Puerto Rico challenging the imposition of these taxes for the reason that the property taxed was located on land over which the United States Government exercised exclusive jurisdiction and could not, therefore, be subjected to the taxing laws of Puerto Rico.[3]

The Superior Court dismissed the complaint, on the authority of *Puerto Rico Drydock & Marine Terminals, Inc.* v. *Secretary of the Treasury of Puerto Rico*, decision rendered June 22, 1962 on reconsideration.[4]

In that case,[5] the Supreme Court of Puerto Rico had decided that by virtue of Section 5 of the Law of the Legislature of Puerto Rico of February 16, 1903 the United

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[1] Appellants' App., page 24.

[2] Appellants' App., pg. 40.

[3] Complaint, Record on Appeal, pg. 1.

[4] Judgment, Record on Appeal, pg. 5.

[5] Appellants' App., pg. 77.

States could lose exclusive jurisdiction over land by leasing it. The law of 1903 constitutes a waiver by the local government of its jurisdiction over land acquired by the United States by purchase or expropriation for naval, military or other public purposes and provides that upon the subsequent *alienation* by the United States of any land so acquired, the People of Puerto Rico shall again have jurisdiction thereof. The Supreme Court decided that the Law should be interpreted according to its English text and that the leasing of property constituted an "alienation" of the same, i.e., the loss of possession and control over it. Consequently, once exclusive jurisdiction was lost by the United States tax immunity did not exist in the area concerned except with respect to federal property.[6]

The appellants then moved the Superior Court to reconsider its decision asserting that the Supreme Court of Puerto Rico had erred in interpreting the Law of 1903 in the *Drydock* case because, since the Law of 1903 was presented to the Legislature in the English and Spanish texts simultaneously, according to article 13 of the Civil Code of Puerto Rico, the Spanish text should prevail. The Spanish equivalent of alienation, that is, "enajenacion", they argued, did not encompass a lease according to civil law theory.[7] The Superior Court denied the motion for reconsideration.[8]

The appellants then sought review of this decision in the Supreme Court of Puerto Rico, as pertinent to our con-

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[6] The oft mentioned case of *The Secretary of the Treasury of Puerto Rico* v. *Esso Standard Oil Co. (P.R.) Et al.* No. 6101, pending decision before the United States Court of Appeals for the First Circuit, was decided on the authority of the first decision handed down by the Supreme Court of Puerto Rico in the *Drydock* case on May 17, 1961 and appealed in the interval between that decision and its decision in reconsideration of June 22, 1962.

[7] Record on Appeal, pg. 8.

[8] Record on Appeal, pg. 21.

sideration, on the same grounds set forth in the motion for reconsideration presented in the Superior Court, that is, on the issue of the correct interpretation to be accorded to the Law of 1903, which, as they had throughout accepted, ruled the decision in the case.[9] The Supreme Court of Puerto Rico denied the petition for review without an opinion.[10]

Then, for the first time, on reconsideration of this decision the appellants assailed the constitutionality of the Law of 1903 as being repugnant to the territorial clause of the Constitution of the United States.[11] The Supreme Court of Puerto Rico denied reconsideration without an opinion.[12]

The questions presented by this appeal are the following:

1. Was the due process clause of the Constitution of the United States violated because the Supreme Court of Puerto Rico allegedly disregarded article 13 of the Civil Code of Puerto Rico in arriving at its interpretation of the Law of 1903?

2. Is the Law of 1903 repugnant to the territorial clause of the Constitution of the United States?

3. Did the Federal Government consent to the imposition and collection of the tax in controversy by the local government?

Jurisdiction

Review is sought pursuant to 28 USCA 1258 (2). We respectfully submit that this Honorable Court does not have

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[9] Record on Appeal, pg. 70.

[10] Appellants' App., pg. 22.

[11] Art. IV, Sec. 3, cl. 2: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States; . . ."

[12] Appellants' App. pg. 23.

jurisdiction to review the questions presented either pursuant to 28 USCA 1258 (2) or 1258 (3), i.e., by writ of certiorari, because the issues upon which appellants rest, were either not presented to or passed upon by the local courts or were not presented seasonably.

Argument

In its interpretation of 28 USCA 1257 this Honorable Court has established certain general principles concerning its appellate jurisdiction. Since sections 1258 and 1257 are similarly worded these principles apply by analogy to the case at bar.[13]

The record in this case does not disclose that the appellants asserted the first issue outlined above at any time in the course of the proceedings in the local courts. The claim that the Supreme Court of Puerto Rico violated due process of law by disregarding article 13 of the Civil Code of Puerto Rico in arriving at its interpretation of the Law of February 16, 1903 is being formulated for the first time in appellants' statement of questions presented by the appeal. The appellants had ample opportunity to present their claim before the local courts since the interpretation complained of was rendered on June 22, 1962 in the above mentioned *Drydock* case, months before the Superior Court handed down its decision in the instant case.[14] This Honorable Court is not free to consider this issue for the reason that it was never presented to, or passed upon, by the courts of Puerto Rico.[15]

The second issue, concerning the constitutionality of the Law of 1903, was presented for the first time in a Motion

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[13] See also Rule 16 (1) of the Supreme Court Rules.

[14] *Saunders* v. *Shaw*, 244 U.S. 317.

[15] *Wilson* v. *Cook*, 327 U.S. 474, 483-484, and cases therein cited; *American Surety Co.* v. *Baldwin*, 287 U.S. 156, 163.

for Reconsideration before the Supreme Court of Puerto Rico after the court had denied a petition for review. Reconsideration was denied without an opinion.[16] It is a long standing principle of appellate procedure in this Honorable Court that, under these circumstances, review must be denied.[17]

"The settled rule is that in order to give us jurisdiction to review the judgment of a state court upon writ of error, the essential federal question must have been especially set up there at the proper time and in the proper manner; and further, that if first presented in a petition for rehearing, it comes too late unless the court actually entertains the petition and passes upon the point." [18]

It is argued that in not entertaining the motion for reconsideration the Supreme Court of Puerto Rico purposely defeated the federal right claimed.[19]

We respectfully submit that appellants defeated their own right by not raising the question seasonably.

The Supreme Court of Puerto Rico had no obligation to entertain the petition for reconsideration and no federal rights were violated by its refusing to do so.[20] If proffered as a basis for appeal, the motion for reconsideration came too late, for the 30 day appeal period had elapsed. As a plea for reconsideration of the order denying the writ of review, it also came too late for it contained new issues which the Supreme Court of Puerto Rico has consistently

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[16] If constitutional issues were involved in this case from the beginning, as alleged by appellants, (Jurisdictional Statement, p. 9) they were never pointed out either "expressly or by clear intendment". *New York ex rel Bryant* v. *Zimmerman*, 278 U.S. 63, 67.

[17] *Hanson* v. *Denkla*, 357 U.S. 235, *Radio Station WOW* v. *Johnson*, 326 U.S. 120; *American Surety Co.* v. *Baldwin*, 287 U.S. 156; *Godchaux Co.* v. *Estopinal*, 251 U.S. 180; *Simmerman* v. *Nebraska*, 116 U.S. 54.

[18] *Godchaux Co.* v. *Estopinal*, ibid, p. 181.

[19] *Hartford Life Ins. Co.* v. *Johnson*, 249 U.S. 490.

[20] *John* v. *Paulin*, 231 U.S. 583.

refused to entertain on reconsideration.[21] It is obvious that the Supreme Court of Puerto Rico did not refuse to exercise its discretion to reconsider in a "spirit of evasion".

The third issue raised is not a claim which will sustain appellants' plea for reversal and therefore is not a basis for review. It is an issue which this Honorable Court would have to consider only in the event that appellants should prevail in either of the other objections formulated.

Substantiality of Questions Presented

Appellee moves to dismiss on the additional ground that the questions presented are so unsubstantial as not to need further argument.

Argument

The Appellants contend that solely through the exercise of the power of eminent domain in 1942, when Puerto Rico was a territory subject to the legislative authority of the Congress, the United States acquired exclusive jurisdiction over the land in controversy. Consequently, it is argued, the Act of the Legislature of Puerto Rico approved on February 16, 1903 granting exclusive jurisdiction to the United States over land purchased or condemned for naval, military or other public purposes and providing that upon the subsequent alienation of the land acquired, Puerto Rico would again have jurisdiction thereover, is unnecessary, unconstitutional and void and cannot be resorted to for the decision of these cases.

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[21] *Monzoreau* v. *Amador*, 40 PRR 124; *Sauri* v. *Sauri*, 39 PRR 810; *Villar & Co.* v. *Conde*, 38 PRR 13; *Ramos* v. *Sucn. Serralles*, 51 PRR 332; *Boerman* v. *Heirs de Boerman*, 53 PRR 211; *Ferrari* v. *American Railroad Co.*, 39 PRR 44.

Jurisdiction, i.e., the power to pass laws having force or effect over persons or property, inheres in the exercise of legislative authority. The power to legislate, in turn, inheres in any organized political community. When first acquired by the United States, the Territories as a rule lacked a political structure of any sort or at least, a structure such as that envisioned by the Constitution and so, the power necessary to govern the people and property in the territories was, by the Constitution, deposited in the hands of Congress.[22] So long as Congress remained the only political authority in the Territory, its jurisdiction was exclusive.

On the other hand, the framers of the Constitution never contemplated that the Territories should remain unorganized or that their lands and people should inure to the benefit or aggrandizement of the federal government. And so, as soon as practicable, Congress has always created a territorial government and delegated its legislative authority to it. After having done so, the jurisdiction enjoyed by Congress was no longer exclusive, but became concurrent with that of the territorial or local government.[23]

Puerto Rico has enjoyed a government with powers similar to those of the States since the Organic Act of 1900.[24] It has, therefore, since that time exercised concurrent jurisdiction with Congress over all the land within its territory.[25] How then, may the United States acquire exclusive jurisdiction over land in Puerto Rico?

Congress would either have to withdraw the land from

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[22] Clause 2, Section 3, Article IV of the Constitution of the United States.

[23] *Charles Watts* v. *U.S.*, 1870, 1 Wash. Terr. Reports 288.

[24] *People of Puerto Rico* v. *The Shell Co.*, 302 U.S. 252, 261-262.

[25] There is no need to consider here the effect of the Commonwealth status acquired in 1952, since the controversy refers to the time during "pre-Commonwealth" Puerto Rico.

the jurisdiction of the local government pursuant to the exercise of its superior legislative authority, or obtain from the local authorities a waiver of jurisdiction. Either one of these alternatives calls for the exercise of legislative judgment. By contrast, the exercise of the power of eminent domain by the United States Government is not in and of itself the Act of Congress and therefore, cannot affect the distribution of jurisdiction or otherwise determine jurisdictional rights. Condemnation is a means of obtaining title only.[26] Nowhere do we find that condemnation in and of itself transfers jurisdiction. On the contrary, Congress, as evidenced by the Act of June 28, 1930, C. 710, 46 Stat. 828, as amended, 40 USC 255, has expressed its desire not to be burdened unnecessarily with the obligations of exclusive jurisdiction. The Act provides as follows:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the state in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the

[26] *James* v. *Dravo Contracting Co.*, 302 U.S. 134.

State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

As far as the property in controversy is concerned, Congress has never acted to withdraw it from the jurisdiction of the local government. The Federal laws which authorized the expropriation of these lands did not provide with regard to jurisdiction. *Public Law 241, 77th Congress, 55 Stat. Chap. 395* authorizes the Secretary of the Navy to acquire the land necessary to construct certain named facilities in different parts of the defense area. As pertinent to our case, it constitutes an authorization to construct fleet-fuel and storage facilities in the 10th Naval District and to acquire the land necessary therefor. *Public Law 247, 77th Congress, 55 Stat. Chap. 409* is an appropriation measure allotting the sum of money necessary to build the fuel and storage facilities authorized by Public Law 241. *25 Stat. 357, 40 USC 257* constitutes an authorization to the Secretary of the Treasury or other government officials to institute proceedings for the condemnation of land where its acquirement has otherwise been authorized. *46 Stat. 1421, 40 USC 258 (a)* outlines the procedural requirements and the effects of the condemnation on property rights. Not one of these provisions purports to regulate or declare anything with respect to legislative jurisdiction over the condemned property.

In the absence of an express declaration by Congress to the contrary, exclusive jurisdiction was acquired by the United States over the land in controversy by virtue of the Act of the Legislature of Puerto Rico of 1903 and should stand as valid law. This is particularly justified in view of the fact that Congress did not see fit to exercise its power

to annul local legislation in this instance.[27] By not doing so, Congress implicitly recognized the validity and necessity of the local Act.[28] There can be no constitutional objection to the condition imposed by the Act of 1903 relative to the effects of the subsequent alienation of the land by the United States, for it is not inconsistent with the carrying out of the purposes of the acquisition.[29]

Summarizing, then, it appears that by delegating its legislative authority, Congress empowered the Government of Puerto Rico to exercise concurrent jurisdiction over the land in controversy. Exclusive jurisdiction could only be regained by the United States by an express act of Congress excluding the property from the jurisdiction of the local government or by the consent of the local legislative authority. Congress has never acted to withdraw the land in controversy from the jurisdiction of the local government and the expropriation proceedings, not having been in and of themselves, the act of Congress, could not effectuate such a transfer of jurisdiction. The law approved by the Legislature of Puerto Rico on February 16, 1903, then, constituted until 1955, when Law No. 62 was approved by this same body, the basis for the acquisition of exclusive jurisdiction by the United States over lands which it purchased and condemned in Puerto Rico and the condition contained therein to the effect that jurisdiction would revert to Puerto Rico in the event that the property were subsequently alienated by the United States, was valid and operative and must be resorted to for the decision of these cases.

Appellants question the soundness of the opinion ren-

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[27] Sec. 31 of the Foraker Act, 31 Stat. Chap. 191 and sec. 57 of the Jones Act, 39 Stat. Chap. 145.

[28] *Atchison, etc.* v. *Sowers*, 1909, 213 U.S. 55; *Soltero* v. *Descartes*, 192 F.2d. 755.

[29] *James* v. *Dravo Contracting Co.*, supra and cases cited therein.

dered on Reconsideration by the Supreme Court of Puerto Rico in the *Puerto Rico Drydock* case for the reason that the Law of February 16, 1903 should be interpreted according to its Spanish text and the meaning accorded by the Civil Law to "enajenacion" should control in this case. It is contended that since there exists a discrepancy between the English and Spanish texts of the law and the matter of preference cannot be decided according to the rules set forth in section 13 of the Civil Code, 31 LPRA 13, as provided by the last paragraph of that same section, the Spanish text should prevail.

The argument is not well founded. The Appellants have brought to the attention of this Honorable Court, not copies of the original bills introduced into the House but, as certified to by the Assistant Secretary of State, copies of the "original handwritten Act authorizing the Governor of Puerto Rico to convey certain lands to the United States for Naval, Military and other public purposes, approved on February 16, 1903".[30] The Act appears in both the Spanish and English languages pursuant to section 45 of the Political Code of Puerto Rico,[31] which states as follows:

> "The Secretary of Porto Rico shall at the close of each session of the Legislative Assembly, collate and cause to be printed, in Spanish and English all the Acts and resolutions passed during the session together with the Organic Act and the Act and Resolutions of Congress amendatory thereof, and such other public laws as he may deem appropriate . . ."

In any case, section 13 of the Civil Code, which was promulgated in 1917 does not apply to a law passed in 1903

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[30] Appellants' App., pg. 58 and 85.

[31] Revised Statutes and Codes of Puerto Rico, 1902, pg. 312.

for it constitutes a general interpretive law [as distinguished from a special interpretive law,] with prospective effect only.[32] The principle governing statutory construction in Puerto Rico prior to 1917 was to the effect that since the English text of a law was the one signed by the Governor, it prevailed in case of discrepancy between the English and Spanish texts of statutes.[33]

Summarizing then, Article 13 of the Civil Code of Puerto Rico is not applicable to the present case because (1) it has prospective effect only and cannot control the interpretation of a law passed before its promulgation in 1917, and (2) the assertion that the Law of 1903 was introduced in the House of Delegates in both the English and Spanish texts is erroneous. It is quite understandable that the Supreme Court of P. R. should have disregarded a statute which was not relevant to its decision. Obviously no rights under the due process clause of the Constitution have been violated.

For the reasons set forth above, we respectfully move this Honorable Court to dismiss this appeal.

San Juan, Puerto Rico, May 18, 1964.

(s) J. B. FERNANDEZ BADILLO
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Solicitor General
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[32] Sutherland, *Statutory Construction*, 3 Ed., Vol. 2, Sec. 3003; Dissenting Opinion Mr. Justice Belaval, *Gines* v. *Ayala*, 84 DPR 245; Puig Peña, Tratado de Derecho Civil Espanol, Tome I, Vol. I, pp. 440-441.

[33] *People* v. *Charon*, 7 PRR 416; *Cruz* v. *Dominguez*, 8 PRR 551; *People* v. *Torres*, 9 PRR 396.